

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

In Re: Lorenzo Anthony Wyche	*	Case Number 10-97723-JRS
Debtor	*	Chapter 13
-----	*	
Lorenzo Anthony Wyche	*	
Movant	*	
vs.	*	
Jeanne R. Wyche, and	*	
Charles A. Mathis	*	
Respondents	*	
-----	*	

**MOTION FOR SANCTIONS FOR WILLFUL VIOLATION OF THE AUTOMATIC STAY**

COMES NOW, Lorenzo Anthony Wyche, movant herein and files this motion for willful sanctions for violation of the automatic stay against Jeanne R. Wyche and her attorney Charles Mathis, respondents herein and shows:

1.

This is a core proceeding over which this Court has jurisdiction pursuant to 28 U.S.C. Section 157. Venue is proper.

2.

Movant filed a petition for relief on December 16, 2010.

3.

The Superior Court of Fulton County issued an Order on July, 8, 2010 (attached), requiring movant to spend six (6) days in jail for failing to pay pursuant to a marital property settlement in a divorce action. The Order was appealed and denied and the Superior Court amended its Order (attached) requiring movant to spend five (5) days in jail starting on December 16, 2010. The Order has been stayed pending review of an emergency motion (attached) asking the Court to honor the automatic stay. That hearing will be held on December 20, 2010.

4.

Respondents were contacted by counsel as well as the Court seeking if they opposed the

honoring of the automatic stay. Respondent Charles Mathis was handed a copy two Court opinions (attached to the emergency hearing motion) on December 16, 2010. Attorney Charles Mathis told counsel as well as the Court that he opposed the honoring of the automatic stay inasmuch as the Order for Contempt of the Superior Court was entered before the bankruptcy petition of the instant case.

5.

The action of opposing the honoring of the automatic stay with knowledge of the automatic stay is a willful violation of 11 U.S.C Section 362.

WHEREFORE, movant requests the Court set this matter for hearing and at such hearing the Court issue sanctions against respondents and do whatever is just.

Dated this 19<sup>th</sup> day of December 2010.

/s/

Milton D. Jones  
Attorney for movant  
GA Bar No. 402541  
PO Box 503  
Morrow, GA 30260  
770 556 5006

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

In Re: Lorenzo Anthony Wyche	*	Case Number 10-97723-JRS
Debtor	*	Chapter 13
-----	*	
Lorenzo Anthony Wyche	*	
Movant	*	
vs.	*	
Jeanne R. Wyche, and	*	
Charles A. Mathis	*	
Respondents	*	
-----	*	

PLEASE TAKE NOTICE that Lorenzo Anthony Wyche has filed a Motion for Sanctions for Violation of the Automatic Stay with the Court seeking an order holding the respondents in violation of the automatic stay and hearing of the motion.

Your rights may be affected by the court's ruling on these pleadings. You should read these pleadings carefully and discuss them with your attorney, if you have one in this bankruptcy case. If you do not have an attorney, you may wish to consult one. **If you do not want the Court to grant the relief sought in these pleadings or if you want the Court to consider your views, then on or before January 18, 2011, you or your attorney must:**

(1) File with the court a written response, explaining your positions and views as to why your claim should be allowed as filed. The written response must be filed at the following address:

Clerk, U.S. Bankruptcy Court, Suite 1340, 75 Spring Street, Atlanta, GA 30303.

If you mail your response to the clerk for filing, you must mail it early enough so that the clerk will actually receive it on or before the date stated above.

(2) Mail or deliver a copy of your written response to the Attorney at the address stated below you must attach a certificate of service to your written response stating when, how, and on whom (including addresses) you served the response.

If you or your attorney do not file a timely response, the court may decide that you do not oppose the relief sought, in which event the court may enter an order granting the relief requested.

If you or your attorney file a timely response, then this matter will be heard on **January 20, 2011 in Courtroom 1404, at 11:00am U.S. Courthouse, 75 Spring Street, Atlanta, Georgia.** You or your attorney is required to appear and assert your position.

DATE this 19<sup>th</sup> day of December 2010

\_\_\_\_\_/s/\_\_\_\_\_  
Milton D. Jones  
Counsel for debtor  
GA State Bar No. 402541  
PO Box 503

Morrow, GA 30260  
770 556 5006

CERTIFICATE OF SERVICE

I have served the foregoing upon the following person by hand-delivery in the Superior Court of Fulton County:

Brenda Gardner, Esq.

Jeanne Carillo  
c/o Charles Mathis, Esq.

Charles Mathis, Esq.

Lorenzo Wyche

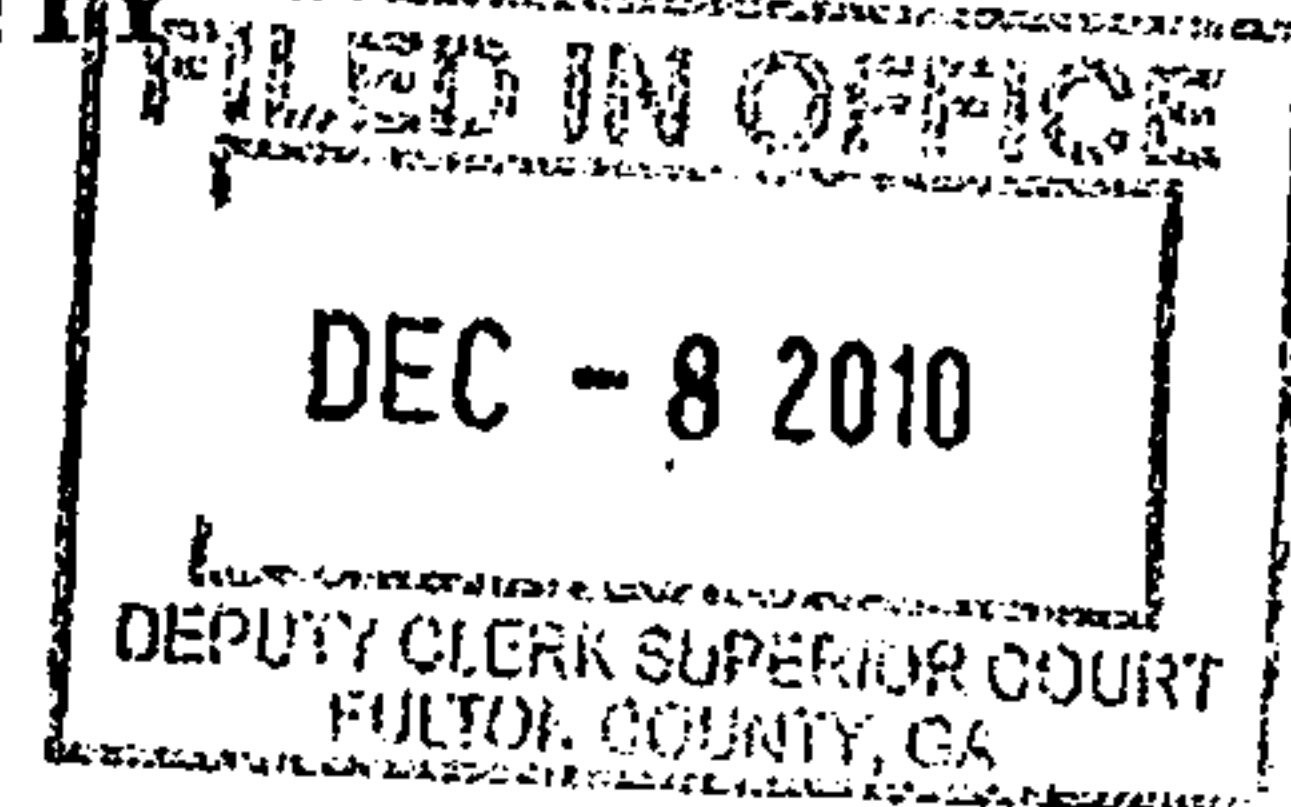
Dated this 20<sup>th</sup> day of December 2010

/s/  
Milton D. Jones  
PO Box 503  
Morrow, GA 30260  
770 556 5006

IN THE SUPERIOR COURT OF FULTON COUNTY

STATE OF GEORGIA

FAMILY DIVISION



JEANNE R. WYCHE

Plaintiff,

v.

LORENZO A. WYCHE, and  
RARE FOOD VENTURES, INC.

Defendant.

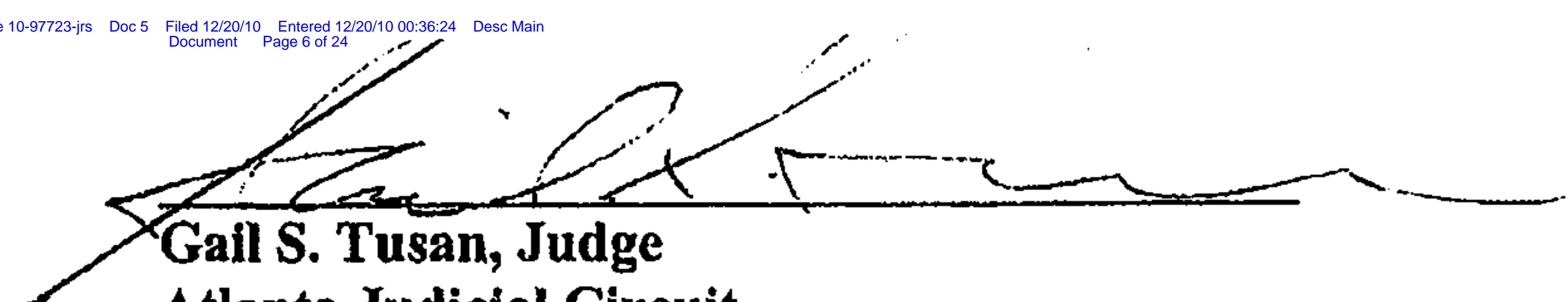
CIVIL ACTION FILE NO.:  
2007CV133071 and  
2007CV141791

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**ORDER**

On July 8, 2010, this Court entered an Order of Contempt against Defendant Lorenzo A. Wyche. Consequently, Defendant was ordered to report to this Court on July 8, 2010 to begin a six-day sentence in the Fulton County Jail. However, Defendant appealed this Court's July 8, 2010 Order to the Supreme Court and this Court entered an Order granting Defendant's Motion for Supersedeas.

Since Defendant's appeal, on August 26, 2010, the Supreme Court of Georgia denied Defendant's appeal and entered a remittitur. Thus, this matter is back before this Court. Pursuant to the previous proceedings and the findings incorporated in the July 8, 2010 Order that was entered by this Court, Defendant Lorenzo Wyche shall report to 185 Central Avenue, S.W., Atlanta, Georgia 30303, Courtroom 8F, on Thursday, December 16, 2010 at 10:00 a.m., to be taken into custody and transported to the Fulton County Jail by the Sheriff's Department where



**Gail S. Tusan, Judge**  
**Atlanta Judicial Circuit**

cc: Charles A. Mathis, Jr., Esq.  
Brenda L. Gardner, Esq.



cc: Charles A. Mathis, Jr., Esq.  
Brenda L. Gardner, Esq.



IN THE SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIA  
FAMILY DIVISION

JEANNE ROSA WYCHE,

PLAINTIFF,

VS.

LORENZO WYCHE AND  
RARE FOOD VENTURES, INC.

DEFENDANTS.

CIVIL ACTION

FILE NOS. 2007CV133071  
AND 2007CV141791

\*\*EXCERPT\*\*

EXCERPT OF TRANSCRIPT OF PROCEEDINGS HEARD BEFORE  
THE HONORABLE GAIL S. TUSAN, JUDGE,  
ATLANTA JUDICIAL CIRCUIT,  
COMMENCING JULY 6TH, 2010

A P P E A R A N C E S:

ON BEHALF OF THE PLAINTIFF: CHARLES A. MATHIS, JR.  
ATTORNEY AT LAW

ON BEHALF OF THE DEFENDANTS: BRENDA L. GARDNER  
ATTORNEY AT LAW

WYNETTE C. BLATHERS, RPR, CRR, CCR-B-2069  
OFFICIAL COURT REPORTER  
T-8955 JUSTICE CENTER TOWER  
185 CENTRAL AVENUE, S.W.  
ATLANTA, GEORGIA 30303

**COPY**



P R O C E E D I N G S

(EXCERPT)

THE COURT: I APPRECIATE THE EFFORT THAT COUNSEL IN PARTICULAR HAS PUT INTO TRYING TO BRING THE ISSUES TO A HEAD TO CLARIFY WHAT HAS TRANSPIRED AND TO ADVOCATE ON BEHALF OF YOUR RESPECTIVE CLIENTS.

THE EVIDENCE HAS ESTABLISHED AND THE ARGUMENT THAT I'VE HEARD HAS PERSUADED THE COURT THAT THERE SHOULD BE NO QUESTION THAT A GREAT DEAL OF MONEY HAS PASSED THROUGH THE ACCOUNTS THAT HAVE BEEN CONTROLLED BY MR. WYCHE SINCE DECEMBER OF 2008. A SIGNIFICANT AMOUNT OF BUSINESS INCOME HAS BEEN APPLIED TO PERSONAL USE, FOR EXAMPLE, THE USE OF THE CHECK CARDS. THERE HAVE BEEN CERTAIN BUSINESS TRANSFERS. REASONS HAVE BEEN GIVEN FOR THOSE TRANSFERS.

THERE'S BEEN THE PAYMENT OF ATTORNEY'S FEES. AND THE COURT DOES NOT SUGGEST THAT MS. GARDNER SHOULD NOT BE COMPENSATED FOR HER SERVICES, BUT SHE HAS BEEN ATTEMPTING TO REPRESENT MR. WYCHE, WHO IS THE PERSON RESPONSIBLE, BOTTOM LINE, FOR THE JUDGMENT.

MR. WYCHE ALONE HAS DETERMINED HOW THE FUNDS THAT HAVE COME INTO HIS ACCOUNTS HAVE BEEN APPLIED, PRESUMABLY BASED ON HIS OWN JUDGMENT OR LACK THEREOF BASED ON THE BUSINESS ADVICE THAT HAS BEEN PROVIDED TO HIM AT HIS REQUEST OR OTHERWISE.

1 IT IS CLEAR TO THE COURT HAVING PRESIDED OVER THE  
2 TRIAL AS WELL AS THE SEVERAL HEARINGS SINCE THE ACTUAL  
3 TRIAL, THAT MR. WYCHE IS A DREAMER, IS A BIG-PICTURE  
4 PERSON BUT IT'S ALSO CLEAR -- AND THAT'S NOT  
5 NECESSARILY BAD. BUT IT IS ALSO CLEAR TO THE COURT  
6 THAT HE IS OVERCOMMITTED, OVEREXTENDED, AND NOT A  
7 DETAIL-ORIENTED PERSON.

8 AND WHILE IT MAY BE THE CASE THAT MR. WYCHE DID  
9 NOT HAVE EXACTLY \$150,000 ON HAND ON DECEMBER 31ST,  
10 2008, OR THE 68,500 AMOUNT ON THE FOUR REMAINING  
11 DESIGNATED PAYMENT DATES, I'M UNABLE TO CONCLUDE THAT  
12 MR. WYCHE TOOK THE NECESSARY STEPS TO BE IN THE BEST  
13 POSITION POSSIBLE TO COMPLY ON THOSE DATES. I WILL  
14 NOTE IT LOOKS LIKE THERE MAY HAVE BEEN A PAYMENT ON OR  
15 AROUND A COUPLE OF THE DATES, BUT SEVERAL MONTHS HAVE  
16 GONE BY SINCE -- BETWEEN THE LAST PAYMENT, AS I  
17 UNDERSTAND IT, AND THE GARNISHMENT THAT OCCURRED IN  
18 THIS YEAR.

19 19 MONTHS LATER MR. WYCHE IS JUST BARELY  
20 SATISFYING THE FIRST PAYMENT THAT WAS DUE IN 2008, AND  
21 THE OFFER TO REPAY THE BALANCE AT THE RATE OF \$3500 OR  
22 SOME SLIGHTLY LARGER AMOUNT PER MONTH WITH THE HOPE OF  
23 SECURING A LOAN THAT HAS NOT YET BEEN APPLIED FOR --  
24 AND THERE CERTAINLY HASN'T BEEN ANY TANGIBLE EVIDENCE  
25 PRESENTED TO THIS COURT TO DEMONSTRATE THAT HE WILL, IN



1 FACT, QUALIFY FOR IT -- IS NOT A SUFFICIENT EFFORT TO  
2 RESOLVE THE SITUATION.

3 THEN IN ADDITION TO THE BALANCES DUE PURSUANT TO  
4 THE JUDGMENT, AN ISSUE HAS BEEN RAISED ABOUT POTENTIAL  
5 TAX LIABILITY THAT MS. CARILLO MAY BE SUBJECTED TO.  
6 AND THERE WAS A REQUEST, WHICH OBVIOUSLY HAS BEEN  
7 DENIED, BY COUNSEL ON BEHALF OF MR. WYCHE TO HAVE  
8 ADDITIONAL TIME TO BRIEF THE ISSUE. AND IN THE COURT'S  
9 MIND IT'S NOT SO MUCH A MATTER OF LEGAL ARGUMENT ABOUT  
10 WHETHER OR NOT THERE IS LIABILITY BUT, RATHER, WHAT HAD  
11 BEEN REQUESTED WAS EVIDENCE OF STEPS TAKEN BY MR. WYCHE  
12 TO ENSURE THAT THE POTENTIAL LIABILITY WOULD BE  
13 REDUCED, ELIMINATED OR, IN FACT, WAS NOT IN EXISTENCE.

14 AND SO THE QUESTION MAY BE, WELL, HOW DO I PROVE  
15 TO THE COURT? WHAT ARE YOU LOOKING FOR? AND MY  
16 RESPONSE TO THAT IS WHAT ABOUT A SIMPLE LETTER WRITTEN  
17 BY MR. WYCHE TO THE APPROPRIATE TAX AUTHORITIES, THE  
18 LICENSING AUTHORITY, SAYING THAT I AM TRYING TO ADDRESS  
19 THIS TAX OBLIGATION THAT IS MINE AND THAT TO THE EXTENT  
20 THAT MY FORMER WIFE'S NAME APPEARS ON THE LICENSE OR IN  
21 YOUR FILE OR YOU'RE GETTING READY TO LEVY AGAINST HER,  
22 PLEASE DO NOT TAKE ANY SUCH ACTION, AS SHE IS AN  
23 INNOCENT SPOUSE UNDER THE CIRCUMSTANCES.

24 AND SO, UNFORTUNATELY, I'M PRETTY DISAPPOINTED AT  
25 THE END OF THE DAY, MR. WYCHE, WITH WHAT HAS BEEN

1 PRESENTED. THE COURT IS NOT IN A POSITION TO FIND THAT  
2 YOU HAVE SATISFIED THE PURGE AMOUNT REGARDING THE TAX  
3 LIABILITY ISSUE NOR DO I BELIEVE THAT YOU HAVE SHOWN A  
4 REASONABLE AND GOOD FAITH EFFORT TO SATISFY THE ONGOING  
5 OBLIGATION AND AM THEREFORE LEFT WITH VERY FEW OPTIONS.

6 THE COURT IS REMINDING YOU THAT I DID FIND YOU IN  
7 CONTEMPT. WE CAME BACK FOR A COMPLIANCE AND FOR A  
8 FINAL RESOLUTION. I AM GOING TO ORDER THAT YOU BE  
9 INCARCERATED FOR FIVE DAYS GIVING YOU THE OPPORTUNITY  
10 TO REPORT TOMORROW TO THIS COURTROOM AT 10:00 A.M. TO  
11 BE TAKEN INTO CUSTODY. HOPEFULLY, DURING THE TIME  
12 WITHOUT THE DISTRACTIONS OF FOCUSING ON THE FUTURE  
13 GROWTH OF ALL OF THESE BUSINESSES, YOU WILL BE ABLE TO  
14 FOCUS ON THE OBLIGATION THAT HAS US ALL HERE TODAY  
15 AGAIN.

16 UPON YOUR RELEASE THE COURT IS ORDERING THAT YOU  
17 SHOULD BE PREPARED TO MAKE MONTHLY PAYMENTS IN THE  
18 FOLLOWING AMOUNTS BEGINNING JULY 15TH AND CONTINUING  
19 UNTIL THE BALANCE IS PAID: \$10,000 ON THE 15TH OF JULY  
20 AND AGAIN IN AUGUST AND SEPTEMBER; THE NEXT THREE  
21 MONTHS BEGINNING IN OCTOBER ON THE 15TH, \$20,000 PER  
22 MONTH. JANUARY, FEBRUARY AND MARCH OF 2011 THE  
23 PAYMENTS SHOULD BE A MINIMUM OF 25,000 CONTINUING APRIL  
24 MAY AND JUNE WITH THE FINAL BALANCE BEING DUE ON  
25 JULY 15TH OF 2011.



1 ARE THERE ANY QUESTIONS?

2 MR. MATHIS: NONE FROM THE PLAINTIFF, JUDGE.

3 MS. GARDNER: YOUR HONOR, IS THERE ANY WAY TO  
4 LIMIT THE DAYS OF INCARCERATION IF, IN FACT, THE LETTER  
5 IS WRITTEN TO COMPLY WITH THE COURT'S DIRECTION AS IT  
6 RELATES TO THE TAX LIABILITY?

7 THE COURT: NO. THERE WOULD NOT BE THAT  
8 OPPORTUNITY AT THIS POINT.

9 ALL RIGHT. WE'RE ADJOURNED.

10 MR. MATHIS: THANK YOU, YOUR HONOR.

11 MR. GARDNER: THANK YOU, YOUR HONOR.

12 MR. WYCHE: THANK YOU.

13 (WHEREUPON, THE PROCEEDINGS WERE ADJOURNED AT 2:37  
14 P.M.)

15 - - - -

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C E R T I F I C A T E

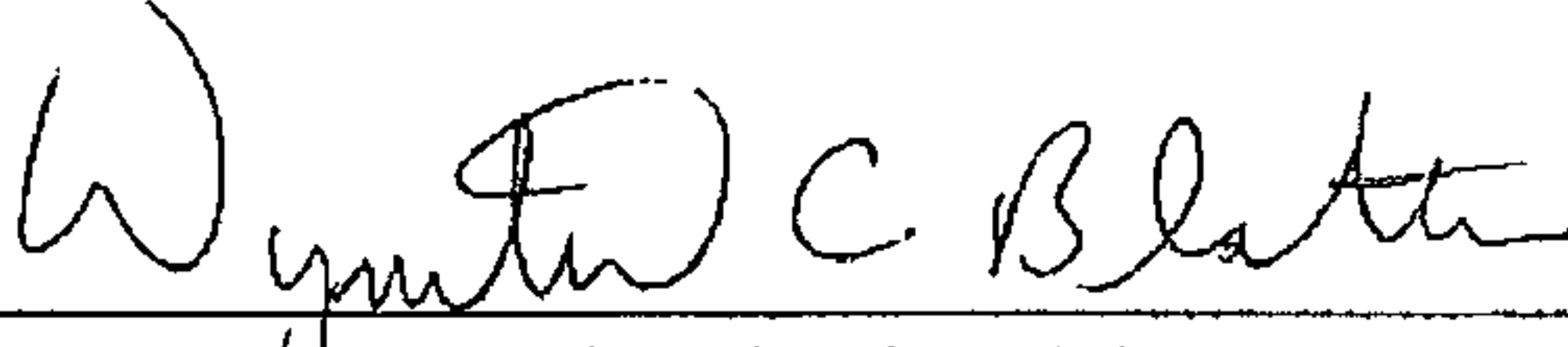
STATE OF GEORGIA:

COUNTY OF FULTON:

I HEREBY CERTIFY THAT THE FOREGOING PAGES  
REPRESENT A TRUE, COMPLETE, AND CORRECT TRANSCRIPT OF  
THE PROCEEDINGS TAKEN DOWN BY ME IN THE CASE AFORESAID  
(AND EXHIBITS ADMITTED, IF APPLICABLE).

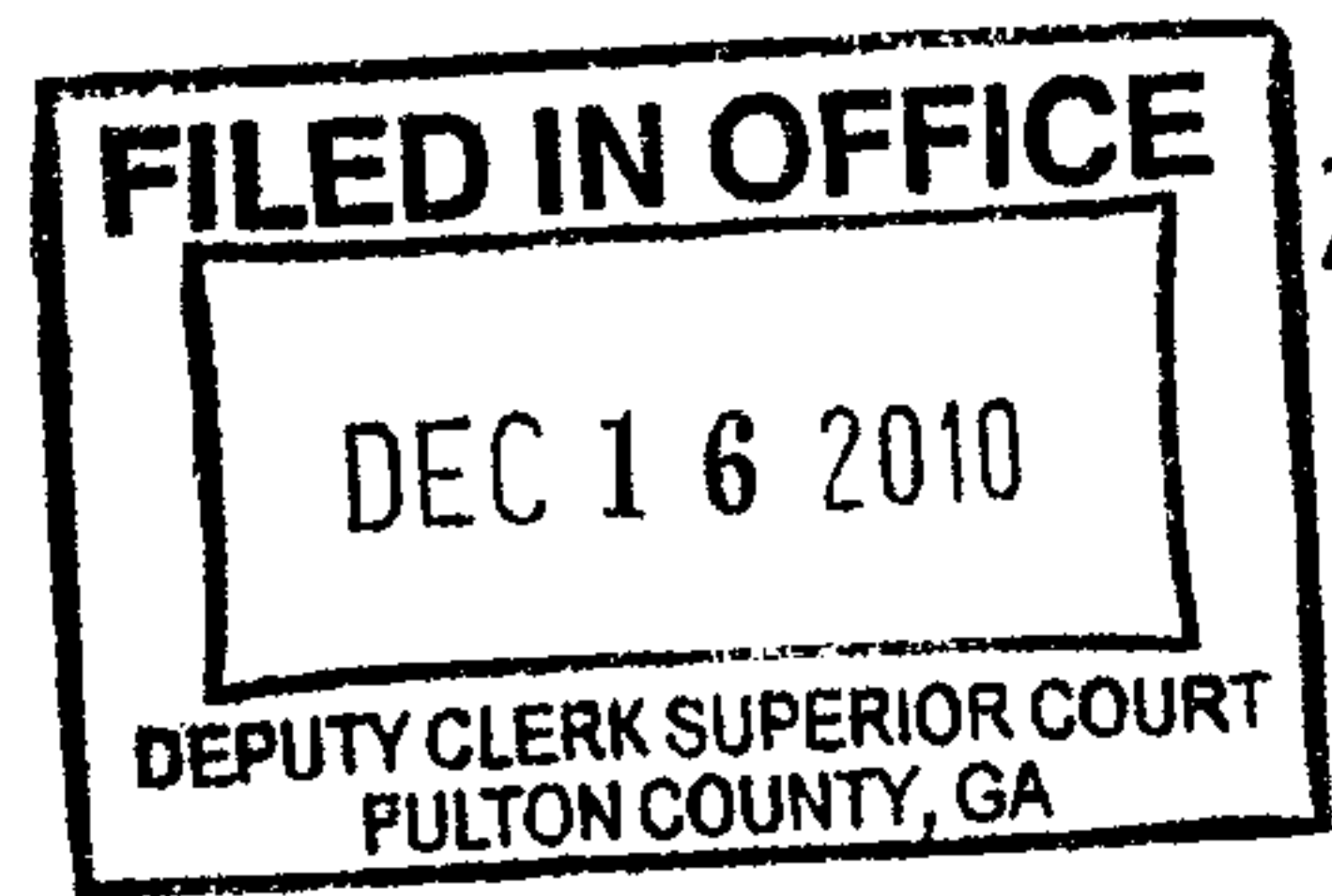
THIS CERTIFICATION IS EXPRESSLY WITHDRAWN AND  
DENIED UPON THE DISASSEMBLY OR PHOTOCOPYING OF THE  
FOREGOING TRANSCRIPT OF ANY PART THEREOF, INCLUDING  
EXHIBITS, UNLESS SAID DISASSEMBLY OR PHOTOCOPYING IS  
DONE BY THE UNDERSIGNED OFFICIAL COURT REPORTER AND  
ORIGINAL SIGNATURE AND SEAL IS ATTACHED THERETO.

THIS, THE 8TH DAY OF JULY, 2010.

  
WYNETTE G. BLATHERS, RPR, CRR, CCR-B-2069  
OFFICIAL COURT REPORTER  
SUPERIOR COURT OF FULTON COUNTY  
ATLANTA JUDICIAL CIRCUIT

FAM2B

In The Superior Court of  
Fulton County  
State of Georgia



Jeanne R Wyche

Plaintiff

vs

Lorenzo A. Wyche, and  
Rare Food Ventures, Inc.

Defendant

Civil Action File No.

2007 CV 133071 and

2007 CV 141791

Emergency Motion To Honor  
Automatic Bankruptcy Stay

Comes Now, Defendant Wyche and files this his  
Motion by and through counsel and shows the court  
the following

1.

On December 16, 2010 at approximately 1:14 AM  
Defendant filed in the U.S. Bankruptcy Court, Northern  
District of Georgia, Case # 10 - 97723, a Chapter  
13, listing Plaintiff as an unsecured creditor.



2.

Since Defendant filed a Chapter 13 bankruptcy case, property of the estate includes all property held as of the petition date and all of his wages. 11 USC § 1306(a)(2)

3.

Any continuing attempts to collect ~~debts~~ the final Judgment, including continued incarceration are in violation of the automatic stay. In Re: Lonnie Robinson, Jr. and Calinda Faith McMillan, NDCR, Case # 10-94242-WLH; In Re: Cuffey, 2010 WL 2508907 (11<sup>th</sup> Cir. 2010) (See Attachments)

Wherefore We Respectfully Request:

- 1) That the court honor the automatic bankruptcy stay; and
- 2) Recall the court's Order of Dec 16, 2010, requiring Defendant to be incarcerated from Thursday, December 16, 2010 until Monday, December 20, 2010

This 16<sup>th</sup> day of December 2010

3455 Peachtree Rd, NE  
5<sup>th</sup> Floor  
Atlanta, Ga. 30326

---

Brenda R. Gardner, Esq  
Attorney for Defendants  
Ga. Bar 284025



Case 10-97723-jrs Doc 5 Filed 12/20/10 Entered 12/20/10 00:36:24 Desc Main Document Page 17 of 24

## Certificate of Service

The undersigned hereby certifies that a true and correct copy of Defendant's Emergency Motion To Honor Automatic Bankruptcy Stay has been served upon opposing counsel by <sup>attempted</sup> Hand Delivery and faxed properly addressed to ensure delivery:

Charles Mathis, Jr Esq  
Fifteen Piedmont Center  
3575 Piedmont Road, NE  
Suite 1560  
Atlanta, Georgia 30305

This 16<sup>th</sup> day of December 2010

3455 Peachtree Rd, NE  
5<sup>th</sup> Fl  
Atlanta, GA - 30326

Brenda L. Barlow  
Attorney for Defendant  
Ga. Bar 284025

## Open New Bankruptcy Case

### U.S. Bankruptcy Court Northern District of Georgia

#### Notice of Bankruptcy Case Filing

The following transaction was received from Milton D. Jones entered on 12/16/2010 at 1:14 AM and filed on 12/16/2010

**Case Name:** Lorenzo Anthony Wyche

**Case Number:** 10-97723

**Document Number:** 1

#### **Docket Text:**

Voluntary Petition (Chapter 13), Fee Collected filed by Milton D. Jones of Milton D. Jones, Attorney on behalf of Lorenzo Anthony Wyche Jr. Government Proof of Claim due by 6/14/2011. (Jones, Milton)

The following document(s) are associated with this transaction:

**Document description:**Main Document

**Original filename:**Wyche000.pdf

**Electronic document Stamp:**

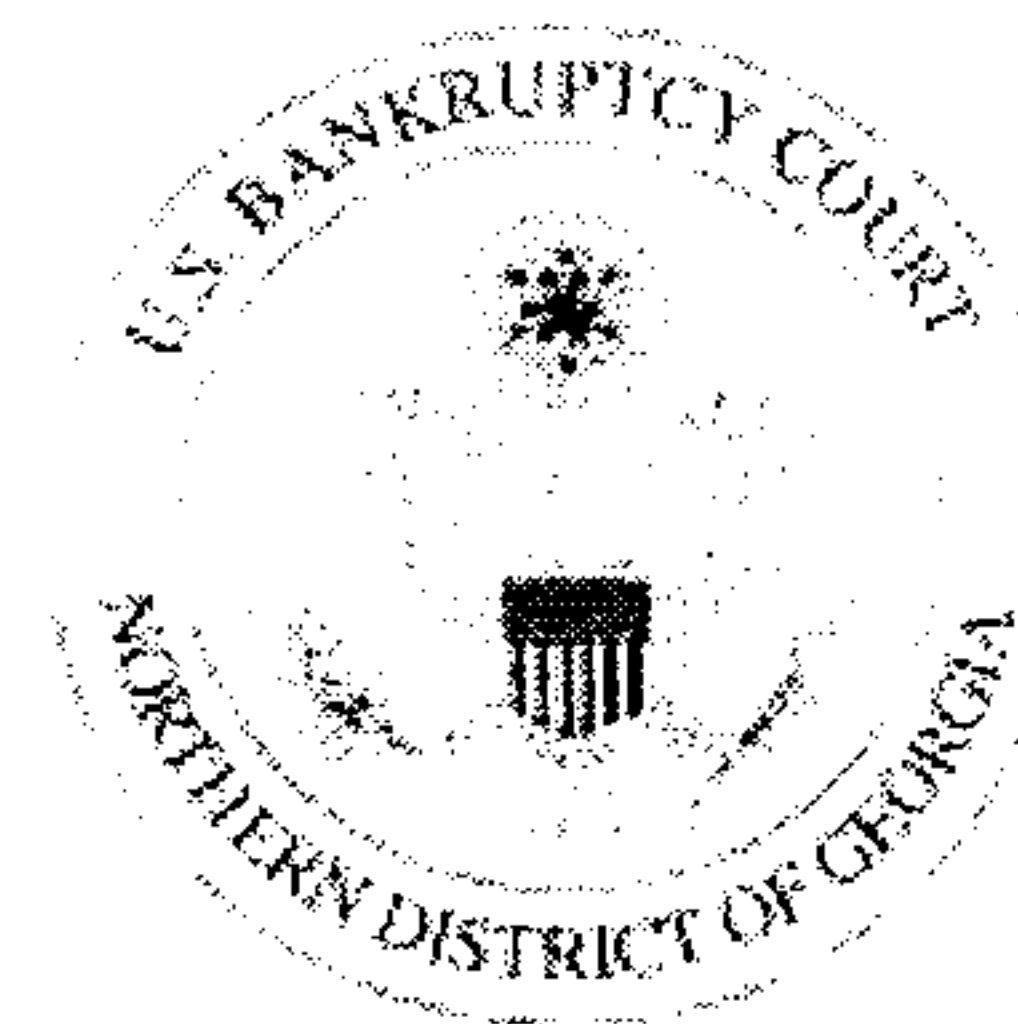
[STAMP GANBStamp\_ID=875559624 [Date=12/16/2010] [FileNumber=37575175-0]  
] [7a5b8264afdf2b6ad813e50c2895bdb1d8409fa050e4b9b2e58c3f4967282ec0207  
b536e1e7ecb32a4506936d4e685779bb6386b5cb44791b6cc87937b5b2bac]]

**10-97723 Notice will be electronically mailed to:**

Milton D. Jones on behalf of Debtor Lorenzo Wyche  
miltondjones@comcast.net, mmajone1@yahoo.com

**10-97723 Notice will not be electronically mailed to:**





**IT IS ORDERED as set forth below:**

**Date: November 23, 2010**

*Wendy L. Hagenau*

Wendy L. Hagenau  
U.S. Bankruptcy Court Judge

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

IN RE:	)	CHAPTER 13
	)	
LONERAL ROBINSON, JR. and	)	CASE NO. 10-94242-WLH
CALINDA FAITH McMILLAN,	)	
	)	JUDGE WENDY L. HAGENAU
Debtor.	)	
_____	)	
	)	
LONERAL ROBINSON, JR.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	ADV. PROC. NO. 10-6653-WLH
	)	
DAVID M. SHIPPERT and	)	
JOCELYN POUNDS,	)	
	)	
Defendants.	)	
_____	)	

**ORDER ON EMERGENCY MOTION**

Plaintiff filed a Complaint for Sanctions for Violation of the Automatic Stay and a Request for Emergency Relief, asking the Court to void any and all actions taken in violation of 11 U.S.C. § 362, to grant the immediate release of the Debtor Plaintiff from incarceration in

Case 10-06653-wlh Doc 7 Filed 11/23/10 Entered 11/23/10 16:03:38 Desc Main Document Page 3 of 4

The Court makes no finding or ruling at this time as to whether any of Defendants' actions constitute a willful violation of the stay and whether sanctions, if any, will be imposed, but all parties' rights are preserved with respect thereto.

**END OF ORDER**



Case 10-06653-wlh Doc 7 Filed 11/23/10 Entered 11/23/10 16:03:38 Desc Main Document Page 4 of 4

**DISTRIBUTION LIST**

Danielle J. Eliot  
Law Firm of Danielle J. Eliot, PC  
1800 Peachtree Street , Suite 300  
Atlanta, GA 30309

Larry J. White  
4406 Marietta Street  
P.O. Box 1106  
Powder Springs, GA 30127-7106

Lonerol Robinson, Jr.  
5680 Sable Bay Point  
Atlanta, GA 30349

David M. Shippert  
4406 Marietta Street  
Powder Springs, GA 30127

Jocelyn Pounds  
4056 Misty Morn Lane  
Powder Springs, GA 30349

## **In re Caffey, 09-15360 (FED11)**

---

**IN RE: JASON A. CAFFEY, Debtor, KAREN RUSSELL, Plaintiff-Appellant,**

**v.**

**JASON CAFFEY, Defendant-Appellee.**

**No. 09-15360**

**United States Court of Appeals, Eleventh Circuit**

**June 23, 2010**

DO NOT PUBLISH

Appeal from the United States District Court for the Southern District of Alabama D. C. Docket No. 08-00450-CV-1-CG-B, BKCY No. 07-12132-MAH

Before DUBINA, Chief Judge, CARNES and MARCUS, Circuit Judges.

PER CURIAM:

Appellant Karen Russell appeals the bankruptcy court order awarding damages to debtor Jason Caffey under 11 U.S.C. § 362(k) (2006) due to Russell's violation of the automatic stay. The district court affirmed the bankruptcy court's award. We affirm the district court order because we conclude that Russell's conduct, including her failure to move to stay the outstanding state arrest warrant that she had procured for Caffey in her domestic support case, willfully contravened the automatic stay within the meaning of the statute.

### **I. BACKGROUND**

Russell sued Caffey in Alabama state court to recover unpaid child support. Caffey failed to appear at the July 2007 hearing, so the state court orally determined his liability and ordered that he be held in contempt. Shortly thereafter, on August 3, 2007, Caffey filed for bankruptcy protection in the Southern District of Alabama. On August 8, 2007, the state court judge signed the written order concerning Caffey's child support obligations and, on August 17, 2007, executed a writ of arrest.

Mobile County Sheriff's Deputies arrested Caffey on September 24, 2007, and held him until October 4, 2007, when his counsel could arrange for his release by agreeing to pay Russell and her attorneys certain negotiated sums. Caffey later instituted an adversarial proceeding against Russell in his bankruptcy case because he contended that her conduct violated the automatic stay imposed by the bankruptcy code. See 11 U.S.C. § 362(a). The bankruptcy court awarded Caffey damages based on his arrest, and that order is now at issue in this appeal.

## II. STANDARD OF REVIEW

As the second court reviewing the bankruptcy court order, we review the legal conclusions made by the bankruptcy and district courts *de novo* and review the bankruptcy court's factual findings for clear error. *In re Int'l Admin. Serv., Inc.*, 408 F.3d 689, 698 (11th Cir. 2005).

## III. DISCUSSION

### A. Notice and Service of the Adversarial Bankruptcy Proceeding

Russell first contends that the judgment against her is void because Caffey never properly advised her of the adversarial proceeding regarding the stay violation. The bankruptcy court found that Russell had waived her objection to the absent service because her attorneys of record participated in the adversarial proceedings. See Fed. R. Civ. P. 12(h) (objections to insufficient service of process are deemed waived if not first made in a Rule 12 motion or responsive pleading). Russell further disputes the finding that her attorneys had the authority to waive the defense on her behalf. We note, however, that a presumption of authority arises when a licensed attorney makes an appearance on behalf of a client. See *Dorey v. Dorey*, 609 F.2d 1128, 1131 n.5 (5th Cir. 1980).

Russell argues that her attorney's lack of admission to the bankruptcy court established an implicit limitation on the attorney's authority to represent her in the adversarial dispute. Russell cites no authority for the proposition that an attorney's authority is bounded by his bar and court admissions, and we find nothing in the record that reflects such an understanding between the attorney and Russell or the bankruptcy court. Nothing in the record suggests that the bankruptcy court's findings regarding waiver and agency were clearly erroneous.

### B. Violation of the Bankruptcy Stay

#### 1. Notice of the Bankruptcy Proceeding

Russell next contends that she could not have willfully violated the stay because she never received notice of Caffey's bankruptcy petition. The bankruptcy court found that, despite the lack of personal notice delivered to Russell, Caffey did sufficiently deliver notice to Russell's attorneys. In her brief, Russell does not dispute this finding so much as she disputes its legal consequence-she contends that personal service was required, and that such service must have been made before the state court entered its final judgment.

The bankruptcy court correctly determined that the notice given to Russell's attorneys sufficiently gave her knowledge of Caffey's bankruptcy petition. See *Cooper v. Lewis*, 644 F.2d 1077, 1082 (5th Cir. Unit A May 1981) (noting that a party is considered to have notice of all facts conveyed to his attorney). Moreover, Russell's complaint that the notice did not come before the state court entered its final judgment is inapposite because she never acted on that notice in the approximately 47 days between the execution of the arrest warrant and Caffey's arrest. She continued to violate the stay by extracting money and promises of future payments from Caffey long after her attorneys received notice of his bankruptcy petition. Given these facts, there is no clear error in the bankruptcy court's finding that Russell knew about Caffey's bankruptcy filing.

#### 2. Carver abstention

In *Carver v. Carver*, 954 F.2d 1573, 1579-80 (11th Cir. 1992), we held that in some narrow circumstances,



had no affirmative duty to delay the contempt order and arrest warrant because they materialized after her involvement in the proceedings ceased.

We are doubtful of Russell's legal assertion about her responsibilities. *See* 11 U.S.C. § 362(a)(1) (prohibiting "the commencement or continuation" of judicial process to recover a debt); *In re Scroggin*, 364 B.R. 772, 781 (B.A.P. 10th Cir. 2007) (holding that a "refusal to take affirmative action to get the garnishment stopped" is a willful violation of the automatic stay); *In re Johnston*, 321 B.R. 262, 282–86 (D. Ariz. 2005) (holding that creditor had affirmative duty to move to vacate state court contempt and arrest orders that were not themselves issued in violation of the automatic stay); 2 Alan N. Resnick & Henry J. Sommer, *Collier Bankruptcy Manual* ¶ 362.03[4] (3d ed. 2009) ("[L]evy of execution, restraining orders, civil arrest orders and exercise of any other postjudgment remedies are stayed."). Even assuming that Russell had no affirmative duty to vacate the outstanding orders, the record demonstrates that Russell actively violated the stay after the arrest warrant was executed. She opposed Caffey's release from prison after being informed of his pending bankruptcy and negotiated \$80, 000 in payments from Caffey as a condition of his release. This is precisely the type of conduct that the automatic stay seeks to prevent, and the bankruptcy court did not clearly err in finding this to be a willful violation of the stay.

#### IV. CONCLUSION

The bankruptcy court did not clearly err in finding that Russell willfully violated the automatic stay. Through her attorneys, Russell had notice of both Caffey's bankruptcy proceeding and the adversarial suit against her. She violated the stay by failing to vacate the state court orders and by extracting payments from Caffey in exchange for his release. Accordingly, we affirm the district court's order affirming the bankruptcy court's order awarding damages to Caffey.

AFFIRMED.